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IN THE
Supreme Court of the United States

ENDREW F., A MINOR, BY AND THROUGH HIS PARENTS AND NEXT FRIENDS, JOSEPH F. AND JENNIFER F.,
Petitioner,

v.

DOUGLAS COUNTY SCHOOL DISTRICT RE-1,
Respondent.

On Writ of Certiorari
to the United States Court of Appeals
for the Tenth Circuit

BRIEF OF 118 MEMBERS OF CONGRESS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

Amici are 118 current and former members of Congress who have a strong interest in ensuring the Individuals with Disabilities Education Act ("IDEA"), formerly named the Education for All Handicapped Children Act of 1975 ("EHA"), is interpreted correctly. A complete list of *amici* is provided in the Appendix to this brief, and it includes current and former ranking members and chairs of the House and Senate committees responsible for drafting and amending the IDEA, as well as other members who participated in the drafting or enactment of the IDEA and its amendments. Among them are:

- Patty Murray, *Ranking Member of the Senate Committee on Health, Education, Labor, and Pensions, and Ranking Member of the Senate Subcommittee on Labor, Health and Human Services, Education, and Related Agencies Appropriations*
- Robert C. "Bobby" Scott, *Ranking Member of the House Committee on Education and the Workforce*
- Tom Harkin, *Former Chairman of the Senate Committee on Health, Education, Labor, and*

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[1] Pursuant to Supreme Court Rule 37.6, counsel for *amici* certifies that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici* or their counsel made such a monetary contribution. Both parties have filed blanket letters of consent to the filing of *amicus* briefs with the Clerk's office.

Pensions, and Former Chairman of the Senate Subcommittee on Labor, Health and Human Services, Education, and Related Agencies Appropriations

- George Miller, *Former Chairman of the House Committee on Education and Labor*

Amici are intimately familiar with Congress's intent in crafting the "free appropriate public education" provision, and are uniquely situated to provide insight into the purpose of the IDEA and Congress's goal to ensure that students with disabilities have access to a meaningful public education.

Respondent argues that the IDEA's requirement that States provide a "free appropriate public education" ("FAPE") to students with disabilities is satisfied by providing educational benefits that are merely "more than *de minimis*." That is a vanishingly low standard, and it runs contrary to Congress's intentions at every step of the decades-long legislative process that culminated in the IDEA as it exists today. Rather, as *amici* explain, Congress considered the lack of meaningful public education for students with disabilities to be a problem of the highest order, and required States to take substantial steps to ameliorate that problem—not merely to provide students with benefits amounting to little more than nothing, as Respondent contends. From the outset, by passing the EHA, Congress intended the requirement that States provide an "appropriate" education to mean one that meaningfully benefits the student. Every subsequent amendment to the statute not only reaffirmed that mandate but also further strengthened and heightened

expectations of substantive academic achievement for these students. Accordingly, *amici* urge that the judgment below be reversed and remanded.

SUMMARY OF ARGUMENT

1. Congress passed the EHA to ensure that students with disabilities receive meaningful education benefits in school. Prior to the passage of the EHA, millions of children with disabilities effectively were denied an education in public schools in this country—either because they received little to no education in the classroom, or because they were shut out of schools altogether. Congress enacted the EHA in response to this unacceptable situation.

Congress was clear that the purpose of the EHA was to provide students with disabilities with a public education that is both "appropriate" and "emphasizes special education and related services designed to meet their unique needs." Pub. L. 94-142, sec. 3(a), § 601(c), 89 Stat. 773, 775. The EHA's legislative history is replete with descriptions of the law as requiring States to provide "full educational services" and "maximum benefits" to students with disabilities, to help them achieve their "maximum potential." The legislative history also emphasizes the need to ensure that children with disabilities receive sufficient educational benefits to become independent and integrated in their communities as adults. Respondent's argument that the statute requires nothing more than just-above-trivial educational benefits for students with disabilities is a clear departure from both the plain meaning of the statute and its legislative history.

2. In subsequent amendments to the statute, Congress repeatedly reaffirmed its intent to provide equal educational opportunity to students with disabilities—and clearly and consistently raised the standards for educating these students. In the 1990 amendments to the EHA (which renamed the law the IDEA), Congress conferred additional educational benefits on students to ensure that they would be equipped to meet their "full potential" as adults.

Congress went even further in the 1997 and 2004 amendments to raise the expectations and requirements for the education of students with disabilities. Recognizing that many students with disabilities continued to fail to meet their full academic potential, Congress sharpened its focus on the *quality* of education offered to students with disabilities as well as the attainment of educational *results* by students with disabilities. Importantly, these amendments systematically raised the expectations for the provision of material educational benefits to students with disabilities—including, for example, by requiring that their education be in general classrooms to the maximum extent possible, focusing on substantive educational improvement, and increasing accountability. As with earlier versions of the statute, numerous statements from Senators and Representatives at the time demonstrate Congress's clear purpose: to ensure that students with disabilities receive the educational benefits they need to achieve economic self-sufficiency, independent living, full participation, and equal opportunities in adulthood.

3. Respondent's interpretation of the IDEA, which would allow States to fulfill their duties under the statute by providing educational benefits that are simply "more than *de minimis*," would render the IDEA a hollow procedural formality. The standard advocated by Respondent could be satisfied without meaningfully improving educational outcomes for students with disabilities. Such a reading would frustrate Congress's clearly expressed intent and must be rejected.

Congress did not expend the time and effort to create a legislative scheme—and then repeatedly refine that scheme over a thirty-year period—to accomplish next to nothing. Nor did it intend for the IDEA's promises to students with disabilities to be illusory. To the contrary, the text and structure of the statute, together with its legislative history, make clear that Congress intended the EHA and the IDEA to reject the historic practice of ignoring students with disabilities' educational potential, provide meaningful educational benefits for students with disabilities and—significantly—raise the expectations and requirements for their educational outcomes.

ARGUMENT

I. Congress passed the EHA to ensure that students with disabilities would receive meaningful educational benefits from the nation's public schools.

Prior to the passage of the EHA, many children with disabilities were denied an education in our country's public schools. In some cases, these students were separated from their peers and segregated into classrooms for students with disabilities, where they received virtually no educational benefits. In other instances, these students were assigned to mainstream classrooms without the tools they needed to improve academically. Some were excluded from public schools altogether. Congress was first alerted to the scope of the problem in 1966, when an ad hoc Subcommittee on the House Education and Labor Committee reported that "only about one-third of the approximately 5.5 million handicapped children were being provided an appropriate special education," and that federal programs directed at them "were minimal, fractionated, uncoordinated, and frequently given a low priority in the education community." H.R. Rep. No. 94-332, at 2 (1975). The EHA itself acknowledged that "the special educational needs of [children with disabilities] are not being fully met," noting that "more than half of the handicapped children in the United States do not receive appropriate educational services which would enable them to have full equality of opportunity." Pub. L. No. 94-142, sec. 3(a), § 601(b)(2)–(3), 89 Stat. at 774.

Congress passed the EHA to address the widespread educational neglect of students with disabilities by

ensuring that they received meaningful access to, and meaningful educational benefits from, public schools. Congress stated in the EHA's Statement of Findings and Purpose that the statute was drafted to ensure that all students with disabilities "have available to them . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs." Pub. L. No. 94-142, sec. 3(a), § 601(c), 89 Stat. at 775. The EHA in turn defines a FAPE to mean "special education and related services which (A) have been provided at public expense, under public supervision and direction, and without charge, (B) meet the standards of the State educational agency, (C) include an appropriate preschool, elementary, or secondary school education in the State involved, and (D) are provided in conformity with the individualized education program required under [the statute]." Pub. L. No. 94-142, sec. 4(a)(4), § 602(18), 89 Stat. at 775.

As the statute makes clear, Congress did not merely guarantee that children with disabilities would be allowed to physically attend public schools, but also required that these children would receive an "appropriate" education designed to ensure that each student could learn and make meaningful progress. Consistent with this mandate, Congress imposed significant requirements on States receiving federal funding under the EHA—including that such States adopt policies and procedures to establish "a goal of providing full educational opportunity to all handicapped children." Pub. L. No. 94-142, sec. 5(a), § 612(2)(A), 89 Stat. at 780.

Indeed, as we discuss below, in floor statements, speeches, and House and Senate Reports, members of Congress repeatedly described the educational goals under the statute as ensuring that students with disabilities reach their "maximum potential," attain "full educational opportunities," and receive a "maximum benefit." To be sure, Congress recognized that the EHA was not guaranteed to produce any specific outcome for children with disabilities. *See* H.R. Rep. No. 94-332, at 14; S. Rep. No. 94-168, at 11, *as reprinted in* 1975 U.S.C.C.A.N. at 1435; *see also Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 192 (1982). But Congress's expressly stated intent to provide full opportunities for students with disabilities shows that the near *de minimis* standard Respondent advocates is incorrect.[2]

The sections of the legislative history that discuss the EHA's funding provisions are representative of Congress's intent in passing the EHA. The Report of the Senate Committee on Labor and Public Welfare first notes that Title VI, Part B of the Elementary and Secondary Education Amendments of 1974, a predecessor to the EHA, "greatly increased the

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[2] Contrary to the suggestion of the majority opinion in *Rowley*, 458 U.S. at 204 n.26, terms such as "maximum potential," "full educational opportunities," and "maximum benefit" are not mere isolated statements in the legislative history. Rather, these terms are used throughout the legislative history to explain and expound on important substantive provisions of the statute. Notwithstanding this misreading of the legislative history, however, *Rowley* correctly recognized that Congress intended to ensure that students have "meaningful" access to public schools, and not merely minimal access. *Id.* at 192.

authorizations" of federal funding so that the States "would be able to meet the mandate set forth in this legislation . . . to establish a policy of providing *full educational opportunities* for all handicapped children." S. Rep. No. 94-168, at 6 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 1425, 1430 (emphasis added).

The Senate Report reveals that Congress worked to improve the educational opportunities offered to students with disabilities so that "many would be able to become productive citizens, contributing to society," and to "increase their independence, thus reducing their dependence on society." *Id.* at 9, *as reprinted in* 1975 U.S.C.C.A.N. at 1433. The House Report is to the same effect: it expresses the hope that "[w]ith proper educational services many ... handicapped children would be able to become productive citizens contributing to society instead of being left to remain burdens on society." H.R. Rep. No. 94-332, at 11. Congress emphasized these same goals in subsequent amendments to the EHA. *See, e.g.*, S. Rep. No. 98-191, at 28 (1983). Likewise, approximately ten years after the passage of the EHA, Senator John Kerry noted that the statute presented students with disabilities with "an opportunity to achieve a new independence and become active in the mainstream of daily American life in a way that 10 years ago seemed like a mere dream." 132 Cong. Rec. 12,924 (1986). Congress thus plainly intended that students would benefit from their education sufficiently to prepare them to enter the workforce and achieve self-sufficiency—and not that they would simply be pushed through the school system without any expectation that they would learn.

The 1975 Senate Report further explains that the intent of the EHA was "to establish in law a comprehensive mechanism which will insure that those provisions [of the Elementary and Secondary Amendments] . . . are expanded and will result in *maximum benefits* to handicapped children and their families." S. Rep. No. 94-168, at 6, *as reprinted in* 1975 U.S.C.C.A.N. at 1430 (emphasis added). Similarly, the Senate Report states that the goal of the eligibility provisions for federal assistance under the EHA was to "assure that *full educational opportunities* are available" to students with disabilities. *Id.* at 3, *as reprinted in* 1975 U.S.C.C.A.N. at 1427 (emphasis added). The House Report echoes the goal of providing "free, *full educational opportunities*" for students with disabilities, emphasizing that the intent of the authorization provision of the EHA was "to provide permanent authorization and a comprehensive mechanism which will insure that those provisions enacted during the 93rd Congress will result in *maximum benefits* for handicapped children and their families." H.R. Rep. No. 94-332, at 5 (1975) (emphasis added).

Congress's substantive goal of improving educational outcomes for students with disabilities is further evident in discussions of the EHA's procedural protections. For example, the EHA required each local educational agency to develop an individualized education program ("IEP") for every student covered by the statute. In describing the purpose for this requirement, the House Report notes that Congress was responding in part to a "fundamental tenet[]" that "each

child requires an educational plan that is tailored to achieve his or her *maximum potential*." H.R. Rep. No. 94-332, at 13 (emphasis added); *see also id.* at 19 (emphasizing that the IEP will achieve one of the two "fundamental goals" of requiring an educational plan "tailored to achieve [a student's] *maximum potential*"). Similarly, EHA cosponsor Senator Bob Dole explained that the purpose of the IEP requirement was to ensure that there would be a "*meaningful* plan" for the student's benefit. 121 Cong. Rec. 19,500 (1975) (emphasis added).

In sum, although the EHA did not guarantee any particular outcome for students with disabilities, Congress's clear intent in the legislation was to provide full opportunities and benefits for students with disabilities, and not merely borderline *de minimis* ones.

II. Through the IDEA and its subsequent amendments, Congress has consistently and clearly raised expectations for the quality of education provided to students with disabilities.

The 1990 amendments to the EHA, which renamed the statute the IDEA, heralded Congress's shift in focus from providing access to equal educational opportunities for students with disabilities to conferring even greater material benefits, with the ultimate goal of "ensuring that children with disabilities grow up to meet their full potential as productive citizens." 135 Cong. Rec. 29,832–33 (1989) (statement of Sen. Harkin). Congress continued to expand the scope of the IDEA with additional amendments in 1997 and 2004, further bolstering the statute's requirements and expectations

with respect to the education of students with disabilities. Each of these amendments illustrates Congress's continued commitment to providing meaningful educational benefits to students with disabilities, in addition to a stronger emphasis on maximizing the full potential of each student.

A. 1990 Amendments

With carefully considered adjustments to terminology and enhancements to targeted programs, in the 1990 amendments Congress renewed its commitment to raising the substantive quality of education for students with disabilities, with the intent of bettering students' educational outcomes.

Congress's focus on improving the quality of education and outcomes for students with disabilities is abundantly evident in the House Report, which candidly recognized that still more support for students with disabilities was necessary to achieve Congress's goal of providing meaningful educational opportunities:

> Today the education of students with disabilities is at a crossroads. The focus over the past 14 years in educating students with disabilities has been on processes and procedures related to special education with access to public education as the goal. The time has come to shift the focus to quality and student outcomes. Simply assuring that services are present or placing students with disabilities into general classrooms is no longer good enough.

H.R. Rep. No. 101-544, at 30 (1990), *as reprinted in* 1990 U.S.C.C.A.N. 1723, 1753 (quoting *The Education of Students with Disabilities: Where Do We Stand?* at 1). Heeding this call, the House Committee on Education and Labor declared that additional federal support was required to "assist States in producing, managing, accessing, and utilizing knowledge for program improvement needed to assure that children with disabilities reach their full potential." *Id.* at 24, 30–31, *as reprinted in* 1990 U.S.C.C.A.N. at 1746, 1753 (referring specifically to funding necessary "to expand the current emphasis on evaluation by including program content for the purpose of achieving program improvements" under § 618, which was amended "to focus on data collection, evaluation, implementation studies, special studies, and preparation of an annual report"). As noted by Senator Harkin, such measures were introduced in response to demands from the public to improve the quality of instruction for students—which he described as the "repeated plea that more be done to disseminate and translate research findings into classroom practice." 136 Cong. Rec. 27,031 (1990).

1. The 1990 amendments clearly rejected a passive approach to educating students with disabilities, in which it was considered sufficient simply to shepherd these students through school with little heed to whether they were making significant progress. Instead, Congress envisioned educational programs for students with disabilities that culminate, to the extent possible, in the skills and knowledge that these students can put to use far beyond the classroom. *See, e.g.*, H.R. Rep. No. 101-544, at 9, *as reprinted in* 1990 U.S.C.C.A.N.

at 1731–32 ("Although not fully responsible for ensuring an appropriate entrance into the adult world, school systems must do more to address the transition of special education students into adulthood."). The House Report focused on the application beyond schooling of the material benefits that students with disabilities garner through their education. For instance, the 1990 amendments added a requirement that the IEP contain a statement of "transitional services," to bridge the gap between schooling and post-education life, as well as an expectation that schools "develop such activities within an outcome-oriented process, thus enhancing a young adult's chances to achieve an adequate level of self-care, independence, self-sufficiency, and community integration." *Id.* at 10, *as reprinted in* 1990 U.S.C.C.A.N. at 1732.

Tellingly, the Committee envisioned the transition to post-education life as critical to ensuring the overall value of the educational opportunities guaranteed under the statute. Again describing programs to facilitate transition, the Committee decried the plight of students with disabilities who, having completed their education, "have no jobs, further training, or programs available to them," some of whom are "forced to linger at home, with literally nothing to do." *Id.* at 37, *as reprinted in* 1990 U.S.C.C.A.N. at 1760. "Years of valuable special education are wasted in such situations," the Committee warned, adding that "[m]ost importantly, human potential and hope are needlessly destroyed." *Id.* Congress thus recognized the importance of providing students with disabilities with meaningful instruction to

ready them for their later transition to post-education life.

2. The 1990 amendments also introduced new statutory provisions regarding the use of "assistive technologies" to improve the education of students with disabilities, which speaks to the same Congressional focus on enhancing the substantive educational benefit conferred by the statute. As existing technologies advanced and new ones came to the fore, Congress sought to harness their power to boost the material benefits available to students with disabilities through education. Accordingly, far from settling for the educational tools existing in 1975, Congress aimed to shepherd the law into the last decade of a century defined by light-speed technological progress. As Senator Harkin put it, the 1990 amendments were to be "responsive to . . . research findings, and new technological advances . . . promis[ing] to enhance the learning capacity of students." 136 Cong. Rec. 27,031 (1990).

In serving these goals, Congress defined assistive devices broadly to include "any item, piece of equipment, or product system . . . used to increase, maintain, or improve functional capabilities of individuals with disabilities." Education of the Handicapped Act Amendments of 1990, Pub. L. No. 101-476, sec. 101(g), § 602(a)(25), 104 Stat. 1103, 1104. Furthermore, these were to be supplemented by assistive technology services, including "any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device." *Id.*, sec. 101(h), § 602(a)(26), 104 Stat. at 1104. The Committee

emphasized that these new tools were introduced with the goal of improving the quality of education that students with disabilities receive. Congress aimed for nothing less than to "*redefine* an 'appropriate placement in the least restrictive environment' and allow greater independence and productivity." H.R. Rep. No. 101-544 at 8, *as reprinted in* 1990 U.S.C.C.A.N. at 1730 (emphasis added).[3]

Taken together, the push to incorporate assistive technologies and emphasis on preparation for the workplace demonstrate that, as the statute took deeper root in its second and third decades, Congress intended to ensure material educational benefits and concrete outcomes for students with disabilities. As emphasized by Senator Harkin, "discretionary programs of the Education of the Handicapped Act have a long history of responding to the educational needs of children with disabilities . . . keeping our Nation's special education system on the cutting edge." 135 Cong. Rec. 29,832 (1989).

B. 1997 Amendments

The IDEA Improvement Act of 1997, Pub. L. No. 105-17, 111 Stat. 37, is further proof of Congress's intent

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[3] This focus on access to technology was echoed by an emphasis of the importance of providing access to media, which was presumably seen as an increasingly important component of educational programs of all types as the decades wore on. For instance, the Committee noted that it had "long supported the greatest possible use of media by persons with disabilities to allow them equal access to America's telecommunications services," services that grew in number and potential use over the years. H.R. Rep. No. 101-544 at 51, *as reprinted in* 1975 U.S.C.C.A.N. at 1774.

to strengthen the IDEA's impact by placing a greater emphasis on educational outcomes for students with disabilities. The 1997 amendments were passed with overwhelming bipartisan and bicameral support[4] after a congressional evaluation found that "educational achievement and post-school outcomes for children with disabilities remain less than satisfactory." S. Rep. No. 104-275, at 14 (1996). Although children's access to education had dramatically improved under prior versions of the IDEA, children with disabilities were still failing courses at a disproportionately high rate and were twice as likely to drop out of school when compared with other students. Indeed, in testimony before the Committee on Labor and Human Resources, Dr. Brian McNulty explained: "Too often we in education have limited our expectations for children with disabilities. . . . These low expectations result in low performance and dismal results." S. Rep. No. 104-275, at 17. Congress thus determined that "the promise of the law [had] not been fulfilled," and sought to revise the IDEA to ensure not merely access to education, but also a "*quality* public education" for all children with disabilities. H.R. Rep. No. 105-95, at 84–85 (1997), *as reprinted in* 1997 U.S.C.C.A.N. 78, 81–82 (emphasis added).

1. The 1997 amendments implemented several "substantive, important changes" to the IDEA, 143 Cong. Rec. 7923 (1997) (statement of Sen. Coats), further confirming Congress's intent to ensure that students

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[4] The 1997 Amendments received 420 affirmative votes in the house with only three negatives (143 Cong. Rec. 8046 (1997)), and ninety-eight affirmative votes in the Senate with only one negative (143 Cong. Rec. 8188 (1997)).

with disabilities receive meaningful educational benefits rather than those that merely border on the *de minimis*. In particular, the 1997 amendments further shifted the focus of the IDEA from an emphasis on ensuring educational *access* to an emphasis on improving individual student *results*.[5] As Congressman Frank Riggs, one of the Amendment's cosponsors, explained:

> [W]e are changing the focus of the bill by raising expectations for the educational achievement for all students, especially those with learning disabilities. States under the legislation must establish goals for the performance of children with disabilities and develop indicators to judge their progress. A child's individualized educational program, otherwise known as an IEP, will focus on *meaningful* and *measurable* annual goals.

143 Cong. Rec. 8012 (1997) (statement of Rep. Riggs) (emphasis added). Similarly, Senator Frist explained that the goal of the amendment was to "shift[] the

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[5] *See* H.R. Rep. No. 105-95 at 82, *as reprinted in* 1997 U.S.C.C.A.N. at 79 ("The purposes of the ... Amendments of 1997 [include] promot[ing] improved educational results for children with disabilities through ... educational experiences that prepare them for later educational challenges and employment."); *id.* at 84, *as reprinted in* 1997 U.S.C.C.A.N. at 81 ("This review and authorization of the IDEA is needed to move to the next step of providing special education and related services to children with disabilities: to improve and increase their educational achievement."); *id.* at 263 ("Improving educational results for children with disabilities is an essential element of [this] national policy.").

emphasis of the IDEA from simply providing access to schools to helping schools help children with disabilities achieve true educational results." *Id.* at 7866.

The Committee on Economic and Educational Opportunities similarly acknowledged this shift in focus, explaining that "[t]he purpose of this act is to . . . educate better children with disabilities and increase the educational opportunities available to these children, focusing on academic achievement, by placing an emphasis on what is best educationally instead of paperwork." H.R. Rep. No. 104-614, at 1 (1996); *see also id.* at 3 ("This Committee believes that the critical issue now is to place greater emphasis on improving student performance and ensuring that children with disabilities receive a quality public education.").

2. Thus, the goals of the amendments to the IDEA were to implement "high expectations for [special education] children" and to "ensur[e] their access in the general curriculum *to the maximum extent possible.*" IDEA Amendments of 1997, Pub. L. No. 105-17, sec. 101, § 601(c)(5)(A), 111 Stat. 37, 39 (emphasis added); *see also* 143 Cong. Rec. 7939 (1997) (statement of Sen. Mikulski) ("Decades of research have shown that educating children with disabilities is successful by having high expectations of special education students.").

To achieve these goals, Congress expanded the definition of children with disabilities, Pub. L. No. 105-17, sec. 101, § 602(3), 111 Stat. at 42–43, forbade the expulsion or lengthy suspension of such students, *id.*, § 615(k)(1)(A), 111 Stat. at 93–94, and required greater participation of students with disabilities in the general classroom setting, *id.*, § 602(29), 111 Stat. at 46; *see also*

S. Rep. No. 104-275 at 49–52. Senator Tom Harkin, a cosponsor of the 1997 amendments, explained that the purpose of these revisions was to ensure that children with disabilities "have the support they need so that they can become fully self-sufficient, productive, loyal American citizens in their adulthood." 143 Cong. Rec. 7927 (1997).

Further, for the first time, Congress insisted that students with disabilities receive an education grounded in the same general curriculum as that followed by their peers. The 1997 amendments required States to "establish[] goals for the performance of children with disabilities . . . that . . . are consistent, to the maximum extent appropriate, with other goals and standards for children established by the State," Pub. L. No. 105-17, sec. 101, § 612(a)(16)(A), 111 Stat. at 67, and to include students with disabilities "in general State and district-wide assessment programs, with appropriate accommodations, where necessary," *id.* § 612(a)(17)(A), 111 Stat. at 67. Members of Congress repeatedly emphasized the importance of ensuring more favorable outcomes for students through their inclusion in general classrooms and lessons. For example, a report prepared by the Committee on Economic and Educational Opportunities explained that "[t]he law creates a presumption that children with disabilities will be educated in regular classes" to "ensure that children's special education plans are in addition to the general education curriculum, not separate from it," and that "[t]he purpose of the IEP is to tailor the education to the child; not tailor the child to the education." H.R. Rep. No. 104-614, at 7, 14. Floor testimony echoed these

sentiments. For example, as Senator Harkin stated during hearings on the reauthorization, "the single most important principle addressed in [this amendment] is improving results for disabled children by ensuring their access to the general curriculum and general educational reforms." 143 Cong. Rec. 7859 (1997). Respondent's argument that the statute calls for little more than a *de minimis* benefit to students with disabilities is inconsistent with these statements of Congress's goals.

3. The new IEP requirements are the clearest manifestation of the goal that every child should receive a substantive education in school. As Congress's summary of the IEP changes emphasizes, almost all of the modifications to IEPs effectuated by the 1997 amendments require substantive improvements to individual students' education. *See* S. Rep. No. 104-275 at 49–52. For example, the amendments: (1) replace "'annual goals'" with "'*measurable* annual objectives' related to . . . enabling the child to *progress*"; (2) require "a statement of how the *progress* of the child toward measurable annual objectives will be measured"; (3) require indicators of progress to be "individualized for each child and include observable performance criteria" including "criteria for mastery" and a target date for mastery; and (4) require the child's IEP team to revise the IEP to address "continued progress or lack of expected progress" and to ensure that "the anticipated educational needs of the child" are being met. *Id.*at 50–51 (emphasis added).

Congress's intent in making these significant changes to the IEP processes was to ensure that IEPs "place[] greater emphasis on educational *results*" and to

"ensur[e] that each eligible child, as appropriate, has the opportunity to *progress* in the general education curriculum." S. Rep. No. 104-275, at 50 (emphasis added). The amendments' explicit focus on substantive educational improvement shows that Congress intended the new IEPs to help students achieve substantial educational progress rather than merely attain some trivial or *de minimis* educational benefit.

The Report of the House Committee on Economic and Educational Opportunities regarding the need to address the communication skills of students with disabilities are illustrative. The Committee explains that "[s]pecial attention should be given to communication. ... The ability of any child to communicate is at the heart of the ability to learn in school and ultimately to be a productive, participating member of the community." H.R. Rep. No. 104-614, at 15. The Committee gives the example of services required for blind students, "intend[ing] to move from having the burden of proof on the parents to prove that a [blind] child will use Braille, to a system in which schools will be expected to provide Braille services and would need to explain on IEP when they would not." *Id.* Ultimately, the House Report makes clear that "[t]he legislation established that goals must be measurable and relate directly to the child's educational needs." *Id.* Focusing on the individualized needs of each student, the Committee adds that "[i]t is not appropriate to have 'group goals' which every child in a particular school's special education program must have on his or her IEP. Every child is different and unique and therefore will have goals which are unique to that child." *Id.*

4. Congress also required students with disabilities to participate in state-wide assessment programs to monitor their educational achievements. Pub. L. No. 105-17, sec. 101, § 612(a)(17)(A), 111 Stat. at 67. These enhanced testing requirements would have made little sense if Congress had been satisfied with providing students merely just-above-trivial educational benefits. Rather, they were designed to ensure that the "unique needs" of each child are met and that the child is being adequately prepared for "employment and independent living." *Id.* § 601(d)(1)(A), 111 Stat. at 42. Thus, although Congress did not alter the wording of the definition of FAPE when it amended the IDEA in 1997, the content of the amendments as a whole underscores Congress's stated purpose to take the "next step" in providing education to disabled children by "improv[ing] and increas[ing] their educational *achievement*." H.R. Rep. No. 105-95, at 84, *as reprinted in* 1997 U.S.C.C.A.N. at 81 (emphasis added); *see also* 143 Cong. Rec. 8012 (1997) (statement of Rep. Riggs) ("States under the [1997 amendments] must establish goals for the performance of children with disabilities and develop indicators to judge their progress. A child's individualized educational program, otherwise known as an IEP, will focus on meaningful and measurable annual goals.").

5. Finally, in addition to increasing the substantive requirements and goals for students with disabilities, the 1997 amendments introduced a new layer of "procedural safeguards" for students and parents, Pub. L. No. 105-17, sec. 101, § 615, 111 Stat. at 88–99, which require state and local education agencies to provide an

option for mediation whenever a parent makes a request for a procedural due process hearing under the IDEA, *id.* § 615(e), 111 Stat. at 90–91. Congress also continued to require parents to exhaust administrative remedies before seeking relief in a state or federal court. *Id.* § 615(i)(2), 111 Stat. at 92. But as the House and Senate reports make clear, the mediation and exhaustion requirements were not meant to replace the statute's substantive goals with procedural ones. Rather, the procedural requirements were intended to help parents and schools achieve the Act's substantive goals "quickly[,] effectively, and at less cost," S. Rep. No. 104-275, at 53, and to do so in a way that "foster[s] a partnership to resolve problems." H.R. Rep. No. 105-95, at 105, *as reprinted in* 1997 U.S.C.C.A.N. at 103; S. Rep. No. 105-17, at 25 (1997). Indeed, the structure of the 1997 amendment also evinces Congress's intent to provide both substantive and procedural guarantees for students with disabilities, as one change in the amendment is that it "gather[s] all state and local agency requirements into single respective sections . . . and place[s] all procedural safeguards requirements in one section." H.R. Rep. No. 104-614, at 4.

In sum, with the 1997 amendments Congress intended to expand the extent of the meaningful educational benefits received by students with disabilities, in part by ensuring that these students were able to participate in the general curriculum "to the maximum extent possible." Pub. L. No. 105-17, sec. 101, § 601(c)(5)(A), 111 Stat. at 39. Respondent's interpretation of the IDEA as granting students with disabilities only just more than trivial educational

benefits, rather than mandating substantial educational progress, is inconsistent with the manifest purpose and stated intent of the 1997 amendments.

C. 2004 Amendments

Congress further elevated the expectations and requirements for educational services provided by States to students with disabilities with the 2004 amendments to the IDEA. These amendments required a higher degree of both substantive, material benefits to students with disabilities and procedural recourse for obtaining those benefits. In discussions regarding the amendments, members of Congress from across the political spectrum reaffirmed the intent to provide high-quality, substantive education for students with disabilities. Representative Boehner explained that, with the 2004 amendments, Congress had "one fundamental goal in mind[:] to improve the educational results for students with disabilities." 150 Cong. Rec. 24,295 (2004). He further stated that students with disabilities "deserve the same high quality teachers, and the same focus on their academic results" as their peers. *Id.* at 24,296. As Senator Reed explained, "[t]he legislation also enhances existing IDEA personnel preparation programs . . . to improve results for students with disabilities." 150 Cong. Rec. 24,276 (2004). Providing students with disabilities "the support they need to reach their full potential" was always a goal of the IDEA. *Id.* at 24,278 (statement of Sen. Enzi). The 2004 amendments "held[] States and school districts accountable for the academic and functional achievements of students with disabilities," which helped to "expand[] services to students with disabilities

in many ways." *Id.* at 24,280 (statement of Sen. Bingaman).

In the Senate Committee on Health, Education, Labor, and Pensions' 2003 report, the Committee noted that its first purpose in enacting these amendments was "[p]roviding a performance-driven framework for accountability to ensure that children with disabilities receive a [FAPE]." S. Rep. No. 108-185, at 5 (2003). The 2003 House Report from the Committee on Education and the Workforce emphasized "the importance of holding high standards for children with disabilities" and of "ensur[ing] that children with disabilities are able . . . to become integrated into the mainstream of American society." H.R. Rep. No. 108-77, at 86 (2003). Importantly, the Senate Report cited approvingly the President's Commission on Excellence in Special Education, specifically the Commission's recommendation to "[f]ocus on results—not on process." S. Rep. No. 108-185, at 4.

Both the Senate and the House Reports also point to the broader legislative framework around the time of the 2004 amendments to demonstrate Congress's commitment to providing educational outcomes—namely through the No Child Left Behind Act ("NCLB") of 2001, Pub. L. No. 107-110, 115 Stat. 1425, which amended the Elementary and Secondary Education Act ("ESEA"). Since the passage of the NCLB, the ESEA mandates standards-based assessments of students in schools, working to ensure that each student meets certain benchmarks by the time he or she completes each grade. The 2004 amendments seek to bring the IDEA in line with these goals of the

ESEA, particularly regarding a unified system of accountability in school districts. As the Senate Report explained: "NCLB established a rigorous accountability system . . . to ensure that all children, including children with disabilities, *are held to high academic achievement standards*. . . . Th[is] bill carefully aligns the IDEA with the accountability system established under NCLB to ensure that there is one unified system of accountability." S. Rep. No. 108-185, at 17–18 (emphasis added); *see also id.* at 18 ("Section 612(a)(15) maintains the requirement that States must establish performance goals and indicators for children with disabilities, but revises the language to align with provisions of the NCLB involving adequate yearly progress."). The House Report concurred on this point: "H.R. 1350 is centered around the following principles for reform: Increasing accountability and *improving education results for students with disabilities*." H.R. Rep. No. 108-77, at 83 (emphasis added). The Committee continued, "Currently, the Act places too much emphasis on compliance with complicated rules, and not enough emphasis on ensuring that academic results are being delivered for children with special needs. As a result of misplaced emphasis, too many children in special education classes have been left behind academically." *Id.*

Ultimately, the ESEA and the IDEA both work to "improve the academic achievement of special education students," 150 Cong. Rec. 24,291 (2004) (statement of Rep. McGovern), so that students with disabilities can "fully utilize their gifts," *id.* (statement of Rep. Sessions). Representative Castle furthered this point:

"Now, more than ever, in the spirit of No Child Left Behind, we must make sure that children with disabilities are given access to an education that maximizes their unique abilities and gives them the tools to be successful, productive members of our communities." *Id.* at 24,299. Respondent's "more than *de minimis*" standard is directly contrary to Congress's demonstrated intent to maximize the potential of students with disabilities, hold them to high academic standards, and improve their educational results to allow them to be productive members of society.

Notably, the first thirty-four pages of the Senate Report speak entirely to substantive reasons to require meaningful educational outcomes for students with disabilities. For instance, the report discusses the necessity of academic achievement for students with disabilities, S. Rep. No. 108-185, at 17–18, and of having students with disabilities participate in assessments, *id.* at 18; but it is not until page thirty-five that the Report even mentions procedural safeguards. Accordingly, like the legislative history of prior amendments, the legislative history of the 2004 amendments demonstrates that Congress intended the IDEA to provide procedural safeguards *and* ensure meaningful educational outcomes for students with disabilities.

III. Respondent's position would frustrate Congress's intent.

By contending that any educational benefit "just above *de minimis*" satisfies the requirements of the IDEA, Respondent asks this Court to adopt a drastically lower standard than the meaningful educational benefit that Congress intended to enable students with

disabilities to attain their full potential. The text, structure, and legislative history discussed above conclusively demonstrate that Congress did not enact the IDEA to be a hollow formality.

Rather, Congress enacted the IDEA to solve the real and serious problem of under-education of students with disabilities. Over a more than thirty-year period, Congress repeatedly enhanced the requirements of the statute, to increase the material educational benefits provided to students (and in turn, required from public schools) under the statute. At every turn, the legislative history demonstrates Congress's focus on ensuring that students with disabilities receive a meaningful education and are well-equipped for adult life after school. It strains credulity to think that Congress would have expended the time and effort to enact and amend this statute merely to give each student with a disability any "just above de *minimis*" educational benefit. Respondent's proffered interpretation of the statute is wholly inconsistent with Congress's clear intent in passing and repeatedly reauthorizing the IDEA, and thus should be rejected.

CONCLUSION

For the foregoing reasons and those stated by Petitioner, the judgment below should be reversed and the case remanded.

Respectfully submitted,

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APPENDIX

APPENDIX

The Members of Congress participating in the *amici* are:

Current and Former United States Senators

Harry Reid
Tammy Baldwin
Michael F. Bennet
Richard Blumenthal
Cory A. Booker
Barbara Boxer
Sherrod Brown
Maria Cantwell
Benjamin L. Cardin
Robert P. Casey, Jr.
Al Franken
Tom Harkin
Mazie K. Hirono
Tim Kaine
Joe Manchin, III
Edward J. Markey
Jeffrey A. Merkley
Barbara A. Mikulski
Christopher S. Murphy
Patty Murray
Jack Reed
Bernard Sanders
Jeanne Shaheen
Mark R. Warner
Sheldon Whitehouse
Ron Wyden

Current and Former Members of the U.S. House of Representatives

Nancy Pelosi
Steny H. Hoyer
Alma S. Adams
Joyce Beatty
Xavier Becerra
Donald S. Beyer, Jr.
Suzanne Bonamici
Robert A. Brady
Julia Brownley
G. K. Butterfield
Tony Cárdenas
Andre Carson
Matt Cartwright
Kathy Castor
Joaquin Castro
Judy Chu

Katherine Clark
Yvette D. Clarke
William Lacy Clay
Steve Cohen
John Conyers, Jr.
Joe Courtney
Joseph Crowley
Elijah E. Cummings
Danny K. Davis
Susan Davis
Mark DeSaulnier
Debbie Dingell
Mike Doyle
Tammy Duckworth
Donna F. Edwards
Keith Ellison
Anna G. Eshoo
Sam Farr
Marcia L. Fudge
Alan Grayson
Raul Grijalva
Luis V. Gutierrez
Colleen Hanabusa
Alcee L. Hastings
Ruben Hinojosa
Eleanor Holmes Norton
Mike Honda
Jared Huffman
Shelia Jackson-Lee
Hakeem Jeffries
Eddie Bernice Johnson
Henry C. "Hank"
Johnson, Jr.
William R. Keating
Dan Kildee
James R. Langevin
Brenda L. Lawrence
Barbara Lee
Sander M. Levin
John Lewis
Ted Lieu
Dave Loebsack
Zoe Lofgren
Alan Lowenthal
Stephen Lynch
Carolyn Maloney
Sean Patrick Maloney
Betty McCollum
James P. McGovern
Gregory W. Meeks
Grace Meng
George Miller
Gwen Moore
Jerrold Nadler
Richard M. Nolan
Donald Norcross
Bill Pascrell, Jr.
Ed Perlmutter
Jared Polis
Cedric L. Richmond
Lucille Roybal-Allard
Tim Ryan
Gregorio Kilili Camacho
Sablan
Linda T. Sánchez
Janice D. Schakowsky

Robert C. "Bobby" Scott
José E. Serrano
Jackie Speier
Mark Takano
Paul D. Tonko
Chris Van Hollen
Juan Vargas
Nydia M. Velázquez
Debbie Wasserman Schultz
Bonnie Watson Coleman
Peter Welch
Frederica Wilson